

**INTRODUCTION**

- [1] On July 19, 2024 the Tenant filed a *Tenant Application to Determine Dispute* (Form 2(A)) (the "Application") with the Residential Tenancy Office (the "Rental Office") disputing three *Eviction Notices*.
- [2] The first and second *Eviction Notices* (Form 4(B)s) were dated and served on July 12, 2024 and July 15, 2024, respectively, for the owner's occupation of the Unit.
- [3] The third *Eviction Notice* (Form 4(A)) (the "Notice") was served by the Landlord to the Tenant on July 16, 2024 for the following reason:

*You have permitted an unreasonable number of occupants in the rental unit.*

The particulars of termination state:

*"[Tenant] has breached the lease by allowing unauthorized occupants at [Unit] causing complaints. Despite warnings, the issue persists."*

- [4] On July 30, 2024 the Rental Office emailed the parties notice of a teleconference hearing scheduled for 11:00 a.m. on August 13, 2024, along with a copy of the Application.
- [5] On August 6, 2024 the Rental Office emailed a 53-page evidence package to the parties.
- [6] On August 8, 2024 the Rental Office emailed a 54-page supplementary evidence package to the parties.
- [7] On August 13, 2024 a teleconference hearing was held with the Tenant, the Landlord, the Landlord's translator and the Residential Tenancy Officer (the "Officer").

**ISSUE**

- i. Must the Tenant and all occupants vacate the Unit?

**PRELIMINARY MATTER**

- [8] At the hearing the Landlord withdrew and cancelled the first and second *Eviction Notices* (Form 4(B)s) served for the Landlord's occupation of the Unit. The Landlord only seeks to end the tenancy agreement based upon the Notice.
- [9] The Officer notes that the parties provided evidence regarding many matters. However, the sole matter before the Officer is whether the Landlord can end the tenancy based upon the number of occupants in the Unit.

**SUMMARY OF EVIDENCE**

- [10] The Landlord, the Tenant and another tenant entered into a written, fixed term tenancy agreement for the period of September 25, 2022 to September 24, 2023. Rent in the amount of \$2,500.00 was due on the 25<sup>th</sup> day of the month and a \$2,500.00 security deposit was paid.
- [11] The Landlord and the Tenant entered into a second, written, fixed term tenancy agreement for the period of September 25, 2023 to September 24, 2024. Rent in the amount of \$2,500.00 is due on the 24<sup>th</sup> day of the month and there is a \$2,500.00 security deposit for this tenancy.

**Landlord's Evidence and Submissions**

- [12] The Landlord's evidence is summarized as follows.
- [13] The Unit is a single family home with three bathrooms, four bedrooms and an additional room for reading and study (the "Study Room"). The Landlord has owned the Unit for approximately four years and it is approximately 2700 square feet in size.
- [14] The Landlord's position is that there was an oral agreement restricting the number of occupants that could live in the Unit to four people.
- [15] The Landlord did not meet in person with the Tenant when the tenancy agreements were signed. The Landlord's interpreter lives in Ontario and was not involved with the signing of the tenancy agreements.
- [16] The Landlord's former property manager, M.Z., arranged the signing of the original tenancy agreement. There was an oral agreement that only four people would move into the Unit when the original agreement was signed. M.Z. no longer provides management services for the Landlord.
- [17] The Landlord's son, H.J., now assists the Landlord with managing the Unit.
- [18] The Landlord received neighbour complaints against the Tenant based upon the number of occupants and vehicles at the Unit. On May 1, 2024 H.J. was investigating neighbour complaints and was advised by the Tenant that there were six occupants in the Unit. H.J. also learned that the Study Room had been converted to a bedroom.
- [19] The Landlord provided evidence regarding maintenance matters.

**Tenant's Evidence and Submissions**

- [20] The Tenant's evidence is summarized as follows.
- [21] The Unit has three bathrooms and five bedrooms. The Study Room has a closet and has been used as a bedroom since the original tenancy agreement started.
- [22] The Tenant denied that there was any oral agreement restricting the number of occupants in the Unit.
- [23] The Tenant and three other people normally live in the Unit. The Tenant's mother and sister are visiting Canada on a six-month visa. The Tenant, his mother and sister will soon be leaving on a trip to visit other family members in Ontario.
- [24] There are vehicles owned by the Tenant and other occupants at or near the Unit. At times, the Tenant's work vehicle and other occupant work vehicles are also parked at or near the Unit.
- [25] The Tenant would like to continue to live in the Unit.

**ANALYSIS**

- [26] For the reasons below, the Officer finds that the Notice is invalid and the Tenant can continue to occupy the Unit.

**Oral Agreement**

- [27] The Landlord has alleged that there was an oral agreement restricting the number of occupants in the Unit. However, M.Z. and H.J. did not participate in the Rental Office hearing to provide testimony regarding an oral agreement. The Tenant has denied that there was an oral agreement restricting the number of occupants.
- [28] Based upon the evidence presented, there is insufficient evidence to establish that the Landlord and the Tenant agreed to restrict the number of occupants in the Unit to a specific number of people.
- [29] The Officer notes that, if a landlord and a tenant agree to a specific number of occupants of a rental unit, then this term should be put directly in the written agreement. In this case the Schedule Ds of both tenancy agreements do not have a term restricting the number of occupants.
- [30] In cases where a landlord and tenant have agreed to restrict the number of occupants, the landlord could seek to end the tenancy for breach of a material term. Clause 61(1)(h) of the *Act* states:

*A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:*

*(h) the tenant*

*(i) has failed to comply with a material term of the tenancy agreement, and*

*(ii) has not corrected the situation within a reasonable time after the landlord has given written notice to do so.*

- [31] Before serving an *Eviction Notice (Form 4(A))*, the landlord would first need to serve the tenant with written notice of non-compliance with a material term of the tenancy and provide the tenant with a reasonable time to correct the situation.

**Number of Occupants**

- [32] The Landlord's basis in the Notice for ending the tenancy agreement is pursuant to clause 61(1)(c) of the *Act*, which states:

*A landlord may end a tenancy by giving a notice of termination where one or more of the following applies:*

*(c) there is an unreasonable number of occupants in the tenant's rental unit.*

- [33] The *Act* and the *Residential Tenancy Regulations* are silent regarding a specific limit on the number of occupants that can occupy a given rental unit.
- [34] Subsection 2(1) of the *Public Health Rental Accommodation Regulations* provides the following restriction:

*No person shall rent or allow to be rented or occupied as a sleeping unit or for purposes for sleeping any accommodation unless there is available not less than fifty square feet of floor area for each and every occupant, and also not less than four hundred cubic feet of space for each and every occupant.*

- [35] Subsection 14(f) also states:

*The tenant shall not increase the number of persons occupying the dwelling unit so as to contravene the provisions of these regulations relating to the number of occupants nor shall*

*he do any other act or thing contrary to the provisions of this or any other Act or regulation of this province.*

- [36] Based upon the size of the Unit, being approximately 2700 square feet, four occupants plus two temporary occupants do not appear to be a breach of these Public Health restrictions.
- [37] Further, it does not appear to the Officer that four permanent occupants plus two temporary occupants are an unreasonable number even if the Unit was considered to have only four bedrooms.
- [38] Based upon the evidence presented, the Officer is not satisfied that the Study Room was prohibited from being used as a bedroom. If the Landlord wished to restrict the use of this room, then this should have been stated in the written tenancy agreements.

**CONCLUSION**

- [39] The Notice is invalid and the Application is allowed. The tenancy agreement will continue in full force and effect and the Tenant can continue to reside in the Unit.
- [40] The Officer notes that the parties submitted documentary evidence regarding the end of the current fixed term. The Officer also notes that, by operation of law, most fixed term tenancy agreements convert to month-to-month agreements if a new written agreement is not signed (see section 52 of the Act).

**IT IS THEREFORE ORDERED THAT**

- 1. The tenancy agreement will continue in full force and effect and the Tenant can continue to reside in the Unit.

**DATED** at Charlottetown, Prince Edward Island, this 19th day of August, 2024.

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(sgd.) Andrew Cudmore  
Andrew Cudmore  
Residential Tenancy Officer

**NOTICE**

**Right to Appeal**

This Order can be appealed to the Island Regulatory and Appeals Commission (the “Commission”) by serving a Notice of Appeal with the Commission and every party to this Order within **20 days of this Order**. If a document is sent electronically after 5:00 p.m., it is considered received the next day that is not a holiday. If a document is sent by mail, it is considered served on the third day after mailing.

**Filing with the Court**

If no appeal has been made within the noted timelines, this Order can be filed with the Supreme Court of Prince Edward Island and enforced as if it were an order of the Court.